

Thrift Bulletin

Handbook: Thrift Activities
Subjects: Capital Adequacy

Section: 320
TB 38-3a

November 19, 1991

Minimum Standards for Voluntary Unassisted Transactions

Summary: This Bulletin sets forth the policies of the Office of Thrift Supervision (OTS) regarding the minimum capital standards that will be applied to significant voluntary unassisted transactions for Federally-insured savings associations, including acquisitions of control, mergers, mutual-to-stock conversions, and branch purchases (collectively referred to as "significant transactions"). Unassisted transactions are those that do not require government financial assistance. This Bulletin does not apply to simple holding company reorganizations, where an association establishes its own holding company and there is no material change in the association or its stock ownership.

Thrift Bulletin 38-3 is rescinded with the issuance of this Bulletin. The principal difference between this Bulletin and TB 38-3 is that proposals and applications to consummate a significant transaction are no longer required to demonstrate that the acquired or resulting association will meet the fully phased-in capital requirements upon consummation of the transaction. Instead, the acquired or resulting association will be required to meet the currently applicable minimum capital requirements. In addition, any acquired or resulting association that meets the current minimum capital requirements but does not meet the fully phased-in capital requirements will be required to submit a business plan that describes how the association will achieve compliance with the fully phased-in capital requirements by January 1, 1995.

For Further Information Contact: Your Regional Office or Policy, OTS, Washington, D.C.

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Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended the Home Owners' Loan Act by adding Section 5(t), requiring the OTS to adopt minimum capital standards for savings associations. On November 6, 1989, OTS promulgated a new capital regulation for savings associations, which became effective December 7, 1989.

The capital regulation requires savings associations to satisfy three separate minimum requirements: a risk-based requirement, a leverage ratio (core capital), and a tangible capital standard. The regulation also requires a mandatory "phase-in" of higher capital standards such that

the 100 percent risk-based capital standard will be effective on December 31, 1992. In addition, FIRREA contains certain transition rules applicable to capital standards that are fully phased-in by January 1, 1995.

General Policy

Proposals and applications to consummate a significant transaction must adequately demonstrate that the acquired or resulting association will meet the currently applicable minimum capital requirements ("current minimum capital requirements") upon consummation of the transaction. The currently applicable minimum capital requirements include the tangible, core, and risk-based capital requirements. For purposes of this Bulletin, the currently applicable core capital, or "leverage ratio," requirement is defined as 3 percent for savings associations that are rated MACRO "1" and 4 percent for all other associations.

In addition, proposals and applications that do not demonstrate that the resulting association will meet the fully phased-in capital requirements upon consummation are generally unacceptable unless the applicant submits a business plan for the resulting association that is acceptable to the Regional Director. The business plan must describe how the institution will achieve compliance with the fully phased-in capital requirements by January 1, 1995. The fully phased-in capital requirements are the savings association's minimum capital requirements based on its current portfolio under the statutory and regulatory standards that will be applicable on January 1, 1995.

Capital Adequacy

This policy statement does not preclude OTS from requiring the resulting or acquired savings association to maintain capital at a level above

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the current minimum capital requirements to ensure that the savings association operates in a safe and sound manner. OTS will notify the acquirer(s) or owner(s) during the application process, if the resulting or acquired association must have capital at a level above the current minimum requirements. Any such higher requirement must be

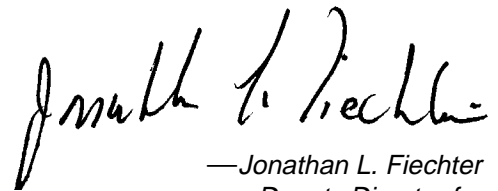
reflected in the association's business plan.

Delegation

An application subject to this Bulletin may be decided by the Regional Director unless the application raises a significant issue of policy or law. Applications that fail to comply

with the policies set forth in this Bulletin present such issues.

In general, non-standard conditions should not be imposed. The Regional Director must receive the concurrence of the Deputy Director for Regional Operations before imposing an agreement that contains non-standard conditions.



—Jonathan L. Fiechter
Deputy Director for
Washington Operations